IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/03/2003

CORAM

THE HON'BLE MR.JUSTICE E.PADMANABHAN

WRIT PETITION No. 8459 of 2002 and WRIT PETITION No.8533 of 2002
AND
WMP.Nos: 11528 and 11630 of 2002

A.Ramakrishnan ..Petitioner
in both WPs

-Vs-

1. The Deputy Registrar of Coop.Societies
J.R.Nagar, Periyakulam, Theni Dist.,

2. M.P.No.92, Varusanadu Primary Agrl.Coop.bank
Ltd.,rep. By its Special Officer,
Varusanadu, Theni Dist., ..Respondents
in both WPs

For petitioner:: Mr.C.Prakasam

For respondents: Mrs,Rani Selvam Govt.Advocate
Mr.S.Kamadevan for R.2

Prayer: Writ Petitions are filed under Article 226 of The Constitution of India praying for the issue of a writ of certiorari/ mandamus as stated therein.

:O R D E R

In W.P.No.8459 of 2002, the petitioner has prayed for the issue of writ of mandamus directing the second respondent to pay subsistence allowance to the petitioner from the date of suspension till the alleged date or removal of the petitioner on 26.2.2002.

2. In W.P.No:8533 of 2002, the very same petitioner has prayed for the issue of a writ of certiorarified mandamus calling for the entire records relating to the impugned orders passed by the second respondent in his proceedings No.nill dated 26.2.202, quash the same and consequently direct the second respondent to reinstate the petitioner in service of the second respondent Bank with all attendant benefits, backwages, continuity of service and seniority.

3. Heard Mr.C.Prakasam, leaarned counsel appearing for the petitioner, Mr.Kamadevan, learned counsel appearing for the second respondent. None appears for the first respondent. With the consent of counsel on either side the writ petition itself is taken up for final disposal.

4. It is rather shocking and unfortunate to note the conduct of the Special officer of the second respondent Society in passing the impugned communication. Such a conduct on the part of the Special Officer is highly shocking and against all fundamentals of service jurisprudence. Normally, this court would have directed the petitioner to raise an industrial dispute. But the very orders of the second respondent impugned in W.P.No:8533 of 2002 which is shocking, arbitrary, unreasonable and against all principles of natural justice, this court has to decide the merits of the writ petition which has already been admitted on 14.3.2002.

5. The petitioner claims that he was appointed in the second respondent society as a sales man on 2.5.1985. The petitioenr has put in several years of service. The petitioenr was suspended on 29.6.1992 by the Special Officer by his resolution No.1, dated 29.6.1992 with retrospective effect from 1.3.1992. Since the petitioner has been kept under suspension for a number of years, the petitioner had moved the first respondent and other Controlling Authorities and all his effort in this respect has not received attention at all. The petitioner was awaiting for the service of the charge memo by the second respondent. But the second respondent has neither revoked the suspension order, nor framed charges uptil now. The second respondent also has not paid any subsistence allowance despite the petitioner repeatedly approaching the second respondent as well as the first respondent in this respect.

6. The second respondent, it is alleged has appointed another person in the place of the petitioner on 29.6.192 itself. The suspension, it is alleged is an arbitrary exercise of power by the second respondent and such a suspension has neither been brought to an end within a reasonable time nor any proceeding has been initiated whcih warranted exercise of power of suspension from service. It is claimed that the petitioner approached the second respondent and other higher officials to reinstate him by sending number of representations. But all of them fell into deaf ears. The indefinite suspension itself according to the petitioner is punitive and the suspension automatically comes to an end as it is no longer essential either to remove the petitioner without framing charges or to initiate any disciplinary proceedings.

7. The petitioner claims that he has made a number of representations including representation on 20.8.2001, 10.9.2001 etc.,. Surprisingly on 26.2.2002 an order has been passed by the second respondent as if the petitioner has been dismissed from service with retrospective effect from 1.3.1992. It is rather extraordinary for the second respondent to dismiss or remove the petitioner with retrospective effect. It is contended that action of the respondent is arbitrary, illegal, violative of bye laws as well as the provisions of the Cooperative Societies Act and principles of natural justice. Indefinite suspension is punitive and without framing charges and without

proceeding further with respect to the alleged misconduct, if any, there cannot be any order of dismissal or removal from service much less, retrospectively.

8. In the counter the second respondent has referred to the impugned proceedings. The second respondent has admitted that by resolution dated 29.6.1992, the petitioner had been placed under suspension with effect from 1.3.1992 for alleged stock deficit and in respect of loss to the second respondent Society. It is not known as to how there could be a retrospective suspension. It is admitted by the second respondent that he has not issued any charge memo to the petitioner. It is also admitted that the petitioner made a number of representations including the representation on 20.8.2001 and 10.9.2001 seeking for revocation of suspension and payment of subsistence allowance.

9. According to the second respondent Ration shops were transferred to Theni Sales Society in 1995 and the petitioner was therefore removed from service. It is claimed that the order of removal has been passed as there is no post of sales man available under the control of the second respondent society. As there is no vacancy, the petitioner cannot be continued in service. Therefore the petitioner has been removed from service. One Muthu has been accommodated and posted as Fertilizer salesman in the vacant post and one Baskaran has been appointed as a temporary peon. The petitioner had not chosen to agitate for his job all these years. The question of following the procedure in the disciplinary proceedings does not arise as there is no post of salesman an the present order of removal is passed due to want of vacancy. Hence the various contentions advanced by the petitioner are devoid of merits.

10. The following points arise for consideration in both the writ petitions:-

(A) Whether the petitioner is entitled for a mandamus as prayed for in W.P.No:8533 of 2002?
(B) Whether on the admitted facts, the petitioner is entitled to the relief of certiorarified mandamus prayed or in W.P.No:8459 of 2002 ?
(C) Whether the action of the second respondent society is illegal, arbitrary and liable to be quashed?
(D) To what relief, if any?

11. A perusal of the impugned order in W.P.No.8533 of 2002 as well as in W.P.No:8459 of 2002 would show that the second respondent has no regard either for the provisions of the Co-operative Societies Act or for the bye laws or the provisions with respect to the minimum requirement of treating the employees of the Co-operative societies.

12. In W.P.No:8459/2002, the petitioner has prayed for a mandamus to pay the subsistence allowance. Concedingly, no subsistence allowance has been paid by the respondent. Yet, the respondent has by letter dated 25.2.2002 denied subsistence as the petitioner has not approached the earlier Special Officer, and therefore he declines to pay subsistence allowance and rejected

the request for payment of subsistence allowance. Once again by subsequent proceedings dated 26.2.2002, the second respondent which proceedings is being impugned in W.P. No.8533 of 2002, has taken the stand that after the suspension, the petitioner should have approached the earlier Special Officer or the Joint Registrar of Co-operative Societies Madurai under whose orders on 28.8.1992 the petitioner has been placed under suspension for relief.

13. It is clear from the counter that the petitioner has been placed under suspension as per the directions issued by the Joint Registrar of Co-operative Societies, Madurai on 28.8.1992. The suspension is therefore liable to be quashed as it has been ordered under the direction of higher authority and not an independent action. Further after suspension no step at all has been taken to proceed further against the petitioner. Hence there is no warrant to suspend the petitioner the suspension on facts, is punitive and liable to be quashed as it is an arbitrary exercise of power.

14. There is no dispute that the petitioner has been placed under suspension as per the directions of the Joint Registrar of Cooperative Societies. But the petitioner being an employee of the second respondent, society should have proceeded further for the alleged deficit of stock or loss which has not been done for more than Ten years. It is also set out in para 2 of the proceedings that the second respondent is not in a position to state as to the revision which the petitioner has preferred before the Regional Joint Registrar of Co-operative Societies or other representations. The second respondent proceeds as if he is a new Special Officer and therefore he is not concerned as to whatever action taken the earlier Special Officer of the second respondent society had taken. This is an extraordinary stand of the Special Officer.

15. It is admitted that the petitioner has been paid salary till April 1992 and thereafter no pie has been paid towards subsistence allowance. It is not as if the petitioner has taken up some other employment. It is also stated that the petitioner should have approached the then Special Officer of the Society for payment of subsistence allowance or salary and he cannot now come before the present Special Officer and seek for payment of subsistence allowance or for salary or any other relief. Such a stand of the Special Officer is rather shocking. It is unfortunate a Special Officer appointed under the Provisions of the Tamil Nadu Cooperative Societies Act should take such a stand which is contrary to fundamentals of against all service jurisprudence as well as the provisions of the Tamil Nadu Co-operative Societies Act and the by laws of the Society governing the service.

16. It may be that the second respondent may not be running fair price shops as of now, but when handing over the fair price shops on the earlier occasion, the second respondent should have handed over the petitioner along with the fair price shops to the organisation or society to whom the fair price shops have been transferred. Having failed to take appropriate action all these days it is not open to the second respondent to now disown the petitioner who is a permanent employee of the second respondent society.

17. The second respondent's stand that no employment can be given to

the petitioner is a clear arbitrary action, which deserves to be deprecated. All the representations submitted by the petitioner to the second respondent and to the first respondent and other authorities had been kept in cold storage. Had the controlling authority or the auditors who audited the second respondent society had taken care of, the petitioner would not have been placed in such a position. For no fault of his, the petitioner is now placed in such a position and it is not also open to the respondent to contend that he is not concerned with the matter or action taken by the earlier Special Officers or for omission or failure on the part of the second respondent society.

18. The second respondent society appointed the petitioner and he continue as its employee and the relationship between the petitioner and the second respondent society has not been terminated in a manner known to law. The Co-operative Societies Sub Registrar, who is the Special Officer unfortunately has neither understood the legal position nor the obligations and duties as a Special Officer in terms of the Co-operative Societies Act.

19. A specific allegation has been made that the petitioner has been suspended to appoint some other person. The present Special Officer is not controverting the same as he is not aware of what has happened during the material period. The refusal on the part of the second respondent-Special Officer to take the petitioner to the services of the society with all benefits is arbitrary and it cannot be sustained at all.

20. The second respondent society should have initiated the disciplinary proceedings after having placed the petitioner under suspension and in a manner known to law should have extinguished the relationship of employer and employee. Admittedly, this has not been done. The employer and employee relationship still continues as the second respondent has placed the petitioner under suspension indefinitely which suspension is punitive and arbitrary.

21. The refusal to reinstate the petitioner by the present Special Officer as if he is an authority for himself and that he is not bound by the action or suspension order or the activities of the earlier Special Officer or society also cannot be appreciated. This court pointed out this to the learned counsel for the second respondentSociety and Mr.Kamadevan, learned counsel took time to get instructions. This court also pointed out that the Society may reinstate the petitioner without backwages but with continuity of services. Mr. Kamadevan, learned counsel fairly stated that he has to get instructions and adjournment was granted on two occasions. Thereafter also the matter was heard. Mr.Kamadevan, learned counsel for the respondent on instruction from the present Special Officer, reported that the Society declined to take him back to duty.

22. This court pointed out the legal position and for which Mr. Kamadevan, learned counsel of the second respondent submitted that he has no answer at all. This court with a view to render substantial justice pointing out the ignorance of the Special officer and give quietus even suggested that the petitioner be reinstated with continuity of service but without backwages.

Even for that, the present Special Officer Mr.V.Jothy without any reasonable justification or cause had chosen to decline. The conduct on the part of the said Special Officer as seen from the impugned proceedings reflects his attitude and there is no other alternative except to decide the writ petitions on merits. Hence on the admitted facts, the petitioner who has been kept under indefinite suspension without a reasonable cause and illegally is entitled to be reinstated with all benefits as he is not at fault for not taking action by the employer-society.

23. The conduct on the part of the Special Officer Mr.V.Jothy, a Co-operative Sub Registrar deserves to be deprecated and he is not fit to be appointed as a Special Officer. Hence this court directs the first respondent, Deputy Registrar of Co-operative Societies, Periyakulam to take steps to replace the said Mr.V.Jothy from the Second Respondent-Society as the said course is warranted by the illegal attitude and conduct of the said individual. The first respondent is directed to take action within a month and see that the present Special Officer of the second respondent society is replaced by an appropriate substitute as he has not acted in the interest of the society, nor followed the provisions of the Co-operative Societies Act and the by laws.

24. In the circumstances,

(i) both the writ petitions are allowed. The impugned proceedings of the second respondent in both the writ petitions are quashed;
(ii) The second respondent is directed to reinstate the petitioner forthwith with full backwages as if he has been continuing in service with continuity of service;
(iii) The second respondent is granted one month time from the date of this order or from the date of production of a copy of this order, to reinstate the petitioner and pay all arrears, failing which the second respondent will be liable to pay interest at 12% on the arrears of salary payable from the date of suspension till date of reinstatement and till the arrears of salary is paid;
(iv) The first respondent shall forthwith replace Mr.V.Jothy, the Present Special Officer of the Second Respondent Society and appoint a substitute in his place;
(v) It is for the first respondent to examine and initiate disciplinary action for the omissions or commissions on the part of the present Special Officer as well as the earlier Special Officers.

25. Both writ petitions are allowed in the above terms with a cost of Rs.3,000/= in each writ petition. This is a fit case where cost should be recovered from the concerned Special Officers.
Consequently, connected WMPs are closed.

Internet:yes
Index:yes
gkv
28-03-2003

To:-
1. The Deputy Registrar of Coop.Societies
J.R.Nagar, Periyakulam, Theni Dist.,

2. M.P.No.92, Varusanadu Primary Agrl.Coop.bank
Ltd.,rep. By its Special Officer,
Varusanadu, Theni Dist.,